

Meeting of 2002-1-8 Regular Meeting

MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
JANUARY 8, 2002 - 6:00 P.M.
WAYNE GILLEY CITY HALL COUNCIL CHAMBER

Mayor Cecil E. Powell, Also Present:
Presiding Bill Baker, City Manager
 John Vincent, City Attorney
 Brenda Smith, City Clerk

The meeting was called to order at 6:35 p.m. by Mayor Powell. Notice of meeting and agenda were posted on the City Hall notice board as required by law.

ROLL CALL

PRESENT: Randy Bass, Ward One
James Hanna Ward Two
 Glenn Devine, Ward Three
John Purcell, Ward Four
Robert Shanklin, Ward Five
Barbara Moeller, Ward Six
Stanley Haywood, Ward Seven
Michael Baxter, Ward Eight

ABSENT: None.

AUDIENCE PARTICIPATION: None.

CONSENT AGENDA :

Separate consideration was requested for Items 3, 13 and 16.

MOVED by Shanklin, SECOND by Purcell, to approve the Consent Agenda items as recommended with the exception of Items 3, 13 and 16. AYE: Moeller, Haywood, Baxter, Bass, Hanna, Devine, Purcell, Shanklin. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for denial: Angie Harmon and Southwestern Bell. Exhibits: Legal Opinion/Recommendation. Action: Denial of claims.
2. Consider the following damage claims recommended for approval and consider passage of any resolutions authorizing the City Attorney to file a friendly suit for claims which are over \$400.00: Silvestre A. and Henrietta Haughton, Alecia Atwell, Vivian Thurman, Arno and Mary Jo Wardeski and Johnnie Proctor. Exhibits: Legal Opinions/Recommendations; Res. Nos. 02-1 and 02-2. Haughton - \$354.28; Atwell - \$172.13; Thurman - \$35.00

(Title only) Resolution No. 02-1

A resolution authorizing and directing the City Attorney to assist Arno and Mary Jo Wardeski in filing a friendly suit in the District Court of Comanche County, Oklahoma, against the City of Lawton; and authorizing the City Attorney to confess judgment therein in the reduced amount of Eight Thousand Three Dollars and 25/100 (\$8,003.25).

(Title only) Resolution No. 02-2

A resolution authorizing and directing the City Attorney to assist Johnnie Proctor in filing a friendly suit in the District Court of Comanche County, Oklahoma, against the City of Lawton; and authorizing the City Attorney to confess judgment therein in the reduced amount of Two Thousand Four Hundred Twenty Five Dollars and 27/100 (\$2,425.27).

3. Consider accepting an easement from The Goodyear Tire & Rubber Company for the installation of a 12" waterline in the Northwest Quarter of Section 6, Township One North, Range Twelve West, that will serve Cotton County Rural Water District #2. Exhibits: None.

Vincent said the signed documents have not been received from Goodyear but they are expected.

MOVED by Purcell, SECOND by Baxter, to accept the easement upon receiving the signed document from Goodyear and upon receipt, authorize signature. AYE: Haywood, Baxter, Bass, Hanna, Devine, Purcell, Shanklin, Moeller. NAY: None. MOTION CARRIED.

4. Consider accepting a permanent utility easement for the south five feet of Lot Five, Block One, White Acres Addition to the City of Lawton, situated in Comanche County, State of Oklahoma which has been donated by Paul C. Nichols and Rosemary Reece, and authorize the Mayor and City Clerk to execute the Acceptance. Exhibits: None. Action: Accept easement which is for street light at 1210 SW 25th Place.

5. Consider adopting a resolution ratifying the action of the City Attorney in filing and making payment of the judgment in the Workers' Compensation case of Danny Goynes in the Workers' Compensation Court, Case No. 2001-3137J. Exhibits: Res. No. 02-3.

(Title only) Resolution No. 02-3

A resolution ratifying the actions of the City Attorney in making payment of the judgment in the Workers' Compensation case of Danny Goynes for the amount of Twenty-Four Thousand Dollars and 00/100 (\$24,000.00) per order of the Workers' Compensation Court, and filing a foreign judgment in the District Court of Comanche County for purposes of placing said judgment on the tax rolls.

6. Consider adopting a resolution ratifying the action of the City Attorney in filing and making payment of the judgment in the Workers' Compensation case of Roy D. Lindley in the Workers' Compensation Court, Case No. 2001-00782H. Exhibits: Res. No. 02-4.

(Title only) Resolution No. 02-4

A resolution ratifying the actions of the City Attorney in making payment of the judgment in the Workers' Compensation case of Roy D. Lindley for the amount of Twenty-Two Thousand Five Hundred Fifteen Dollars (\$22,515.00) per order of the Workers' Compensation Court, and filing a foreign judgment in the District Court of Comanche County for purposes of placing said judgment on the tax rolls.

7. Consider adopting a resolution ratifying the action of the City Attorney in filing and making payment of the judgment in the Workers' Compensation case of James H. Wilkinson in the Workers' Compensation Court, Case No. 2001-08389H. Exhibits: Res. No. 02-5.

(Title only) Resolution No. 02-5

A resolution ratifying the actions of the City Attorney in making payment of the judgment in the Workers' Compensation case of James H. Wilkinson for the amount of Sixteen Thousand Eight Hundred Twenty Seven Dollars and 00/100 (\$16,827.00) per order of the Workers' Compensation Court, and filing a foreign judgment in the District Court of Comanche County for purposes of placing said judgment on the tax rolls.

8. Consider adopting resolutions authorizing the City Attorney to commence litigation in District Court to have the structures at the following addresses demolished at each respective owner's expense: 1213 SW Summit Ave. and 1215 SW Summit Ave. Exhibits: Res. Nos. 02-6 and 02-7.

(Title only) Resolution No. 02-6

A resolution authorizing the City Attorney to commence legal action against Booker T. Alberty Jr. to compel said individual to demolish a certain dilapidated structure located at 1215 SW Summit Avenue.

(Title only) Resolution No. 02-7

A resolution authorizing the City Attorney to commence legal action against Booker T. Alberty Jr. to compel said individual to demolish certain dilapidated structures located at 1213 SW Summit Avenue.

9. Consider approving a building permit for the burnt out structure located at 417 SW 23 Place. Exhibits: Permit application and letter of request. Action: Approve building permit for 60 days.

10. Consider approving a building permit for the burnt out structure located at 417 NW 53rd Street. Exhibits: Permit application and letter of request. Action: Approve building permit for 60 days.

11. Consider approving plans and specifications for the Streets/Solid Waste Collection Restroom Project #2001-19 and authorizing staff to advertise for bids. Exhibits: None. Action: Approval.

12. Consider approving the construction plans for a sewerline located on the east side of SW 52nd Street, north of Lee Boulevard. Exhibits: Location Map. Action: Approve the construction plans for a sewerline to be located on the east side of SW 52nd Street, north of Lee Boulevard, subject to approval of the Oklahoma Department of Environmental Quality.

13. Consider approving the construction plat for Pebble Creek Addition, Part 3, subject to conditions. Exhibits: Plat Map; Draft CPC Minutes.

Moeller asked if the dotted line on the plat map represented a water line. Bob Bigham, Director of Planning, said it is a drainage line. Moeller said the issue of inadequate water pressure, especially in a new area, was troubling, and asked why a basin-wide study was not done. Bigham said during the engineering review of the subdivision, it was identified that the minimum water pressure standard was not met on fire flows of 1500 gpm at 25 psi residual. He said alternatives were to reduce the density of the houses and have more separation, or the developer would be required to improve the water system which would be very expensive, so the developers opted to go with reducing the density and having an eleven foot separation between the structures, which does meet the fire flow standards.

Moeller asked if there would be more problems as the addition begins to build out and homes are added. Bigham said it will have to be watched carefully and the Planning Commission had raised some issues on it and wanted to see what areas of town had low pressure and it will be considered carefully in the future.

Shanklin asked what the water problem was. Bigham said testing showed 1000 gpm at fire hydrants at 25 psi residual as opposed to 1500 gpm. Shanklin asked the reason for that problem. Bigham said the sizing and looping of the water lines, and it is only looped from one direction. Shanklin asked if pressure would be adequate if it was looped. Bigham said yes, improvements could be made to the water system to get up to the 1500 gpm but it would be quite expensive. Shanklin said none of the lines are tied to the water tower. Bigham agreed. Shanklin said there is too much pressure at MacArthur Junior High, so there is pressure but it has to get to the right spot.

Purcell asked why it was recommended for approval without meeting the minimum water standards. Bigham said in looking at options in the water pressure and fire hydrant standards, separating the buildings at eleven feet met that standard of 1000 gpm at 25 psi residual, so this does meet the standards by keeping the buildings a little farther apart than a normal situation. Purcell said it could create problems for future development. Bigham said if there is another subdivision planned, this option may or may not work.

MOVED by Moeller. SECOND by Haywood, to approve the construction plat subject to: 1) Approval of ODEQ; 2) Approval of a Special Flood Hazard Development Permit; 3) The plat restrictions include the provision that no part of any structure, including roof overhangs, shall be closer to the property line than 5-1/2 feet. AYE: Baxter, Bass, Hanna, Devine, Purcell, Shanklin, Moeller, Hanna. NAY: None. MOTION CARRIED.

14. Consider approving an agreement for euthanization services with the City of Grandfield, and authorize the Mayor and City Clerk to execute the agreement. Exhibits: None. Action: Approval.

15. Consider acknowledging receipt of permits for the construction of sanitary sewer lines from the Oklahoma State Department of Environmental Quality to serve Arnold Park and Carver Street Upgrade Sewer Line Projects, City of Lawton, Comanche County, Oklahoma. Exhibits: None. Action: Acknowledge receipt.

16. Consider acknowledging receipt of permit from the Oklahoma State Department of Environmental Quality for the supply of potable water to Comanche County Rural Water District No. 2. Exhibits: None.

Shanklin said water was being drilled southwest of town. Vincent said this is north off of Porter Hill.

MOVED by Shanklin. SECOND by Haywood, to acknowledge receipt of the permit. AYE: Bass, Hanna, Devine, Purcell, Shanklin, Moeller, Haywood, Baxter. NAY: None. MOTION CARRIED.

17. Consider acknowledging receipt of permit from the Oklahoma State Department of Environmental Quality for the construction of sanitary sewer line with appurtenances to serve the Dunbar Commercial Property. Exhibits: None. Action: Acknowledge receipt.

18. Consider adopting a resolution authorizing the City Clerk to dispose of certain original records which have been reproduced on optical disk. Exhibits: Resolution No. 02-8 and Affidavit.

(Title only) Resolution No. 02-8

A resolution authorizing the City Clerk to dispose of certain original records which are kept by the City Clerk and which have been accurately reproduced and perpetuated on optical disk in all detail, such records being as follows: expired contracts; nuisance files; board minutes; board meeting notices and agendas; and judgments.

19. Consider approving contracts for the Co sponsorship Program. Exhibits: Contracts on file in City Clerk's Office. Action: Approval. Lawton Porcelain Artists - \$387.00; Southwest Oklahoma Dance Alliance - \$1,000.00; Southwest Oklahoma Opera Guild - \$500.00.

20. Consider approving Second Amendment to Declaration of Trust documents of the McMahon Auditorium Authority. Exhibits: Amendment on file in City Clerk's Office. Action: Approve Second Amendment to Declaration of

Trust of McMahon Auditorium Authority adjusting purchasing policy limits.

21. Consider authorizing the acceptance of bids to replace the existing contract between the City of Lawton and Spherion and, if appropriate agreement is reached with a successor, authorize the termination of the current agreement; further consider authorizing the City Attorney to initiate legal action, as necessary, to recover any damages incurred by the City. Exhibits: Letters. Action: Approval as shown.

22. Consider approving the following contract extension: Rear Suspension Repair with Loden Spring and Suspension, Inc. Exhibits: None. Action: Approval.

23. Consider awarding contract for Credit Card Acceptance Program. Exhibits: Recommendation; Abstract. Action: Award to Bank of Oklahoma of Tulsa.

24. Consider rejecting contract for Dump Truck Hauling. Exhibits: Recommendation; Abstract. Action: Reject bids.

25. Consider awarding contract for Glass Beads. Exhibits: Recommendation; Abstract. Action: Award to Swarco Reflex, Inc.

26. Consider awarding contract for Copper and Brass. Exhibits: Recommendation; Abstract. Action: Award to Water Products of Oklahoma, Inc.

27. Consider approval of appointments to boards and commissions. Exhibits: Memo.

Parks & Recreation Commission: Thomas A. Bell, Ward 4, Term: 1/11/02 to 1/11/04
City (Municipal) Planning Commission (CPC): Tom Linville, Ward 4, Term: 12/14/01 to 12/14/04

28. Consider approval of payroll for the period of January 7 through 20, 2002.

29. Consider approval of Minutes of Lawton City Council Meetings of December 11, 17 and 18, 2001.

Item 35 was considered at this time.

35. Consider adopting an ordinance repealing Ordinance 2001-34, adopted on November 27, 2001, related to the sale of surplus city property in the vicinity of NW 67th Street and Quanah Parker Trailway. Exhibits: Ordinance No. 02-____.

MOVED by Baxter, to approve Ordinance No. 02-01, which will repeal Ordinance 2001-34, waive the reading of the ordinance and read the title only.

MOVED by Shanklin, that we not repeal Ordinance No. 2001-34.

Mayor Powell said public input would be received in an orderly manner.

Sandra Montgomery, 6705 NW Oakdale Drive, Grayson Mountain Estates, said she did not wish for the City Council to sell the land to Wal Mart because to do so inferred support of Wal Mart entering that area; she worked all her life for their home and did not want a Wal Mart one block from it. Montgomery said a woman was robbed in the parking lot at the existing Wal Mart and she did not want that in a residential neighborhood.

Dan Woodward, 11th and C Avenue convenience store, said he was not against Wal Mart but opposed another one in town for three reasons. He said it is not wise to put a super center between two of the nicest housing areas, and he was concerned about the impact a super center would have on existing businesses, most of which are owned and operated by local citizens who spend their money here; any money generated by Wal Mart will go back to Arkansas.

Woodward said for nearly two years he had battled several major oil companies in this town that have routinely violated Oklahoma Statute Title 15-598.1, better known as the Unfair Sales Act. He had complained to the Oklahoma Corporation Commission, District Attorney's office, City Attorney's office, Lawton Police Department, Comanche County Sheriff's Department, and the Petroleum Marketers Association. Mayor Powell said this is not related to this item. Woodward said it was related to his third reason for opposing it. Woodward said he had also spoken with Rep. Ron Kirby and the Oklahoma Attorney General; and the only one of these groups that could or would do anything was the Attorney General, which was a shame because the law was put into place to protect independent petroleum marketers like himself as well as the consumers.

Woodward said Wal Mart is building new stores all over the country, and in conjunction with Murphy Oil Company, they sell fuel at their new sites. He said he was not afraid of competition but was concerned that all over the country Wal Mart is selling their fuel at cost and below in violation of established minimum mark up law, i.e. the

Unfair Sales Act. Woodward said he did not blame Wal Mart but did blame the local district attorneys that fail to enforce the law either out of indifference, corruption, or both. Woodward said he had finally had some success in forcing the major oil companies in this town to stop cheating on their fuel prices but had to involve the Attorney General, and he did not want to have to go through all of this with Wal Mart, however, if it is their intent to come to this town and sell their gas at cost or below cost, he would give them fair warning that he would report them to the Attorney General and if that failed to get the desired result, he would rally petroleum marketers to sue Wal Mart for damages as well as to make them obey the law and Wal Mart should consider themselves as having been warned.

Terry Haynes, Vice President and Principal Engineer for Spear and McCaleb Company of Oklahoma City, said the request tonight is to repeal the ordinance adopted by the Council on November 27, 2001, for the sale of 2.8 acres of surplus city property which is located just north of Ben Horton's property. He said he was present on behalf of his client, Wal Mart, to ask the Council to vote against the repeal of the ordinance.

Haynes said the stability and growth of the community was a testament to his client's desire to build a new super center here. Wal Mart representative Tim Baker from the home office in Bentonville was introduced to speak. Baker said he was the real estate manager for Oklahoma and North Texas, and he was accompanied by David Dyke, the store manager, the district manager, the co-manager, and all of these gentlemen, with the exception of Mr. Dyke, live here in Lawton. Baker said he was present to convey to Council the seriousness with which the home office takes this matter and would strongly request the Council go ahead with the sale of this strip of land.

Tim Baker said he would like to convey also that although this strip would adversely effect what they would be able to do with this site, it would not necessarily preclude them from going to this site and opening a super center; it would preclude them from having a prototypical store and having the sales they would like to have. He said ironically it would negatively impact their sales of tires and they are one of the largest sellers of Goodyear tires outside of their own distributorship. Baker said they had taken into consideration several concerns of the Mayor, individual councilmembers and the community as have been shared with local store associates, and want to minimize the impact on any surrounding neighbors and have a first rate business operation. He said they wanted to answer any questions and provide the facts in case there are concerns, such as the concern with selling gas at or below cost which he thought was unfounded and slanderous; Wal Mart complies with every regulation and ordinance in every state and city in which they operate. Baker said they know they are under the microscope and that is fine but they do not violate the law and if they make a mistake, they rectify it.

Purcell said he spoke with Mr. Baker and a couple of others yesterday, and he was inviting them to build a store on the east side but that did not go anywhere. He said he wanted it in the open if he heard Mr. Baker correctly yesterday, he used the words if the city council did not agree to sell the land, the exact words were that was not a fatal flaw and asked if he was quoting correctly. Baker said yes, in their conversation yesterday, that is an accurate quote. Purcell said he wanted to be very clear what that means and asked if Baker was saying if they did not get the 2.8 acres, they would still build the store at this location. Baker said respectfully that is our position. Purcell asked if the answer is yes to that question. Baker said yes. Purcell said even if you do not get the 2.8 acres, you are still going to build the store at that location. Baker said we would not be precluded from building it, correct. Purcell said he would ask the question again and wanted an answer before voting tonight, yes or no, he needed an answer because it depends on what the answer to that question is on how he votes, but he needs an answer respectfully to that question and would let it go for now but asked that they be prepared to answer it later.

Terry Haynes said Mr. Horton's property was chosen by Wal Mart for a new super center because of its close proximity and available land on the west side of Lawton, and after several inquiries with city staff. He said staff was consulted to help find a logical location that was consistent with the acreage required and in harmony with proper planning methods; the availability of the city surplus property is essential to them to establish a full service super center. Haynes said there is a Sam's and Wal Mart super center in Lawton now; the financial receipts at both of these stores have produced an economic indicator that the timing, the logistics and the community are ready for a second super center; the third largest city in the State of Oklahoma does not have a second super center, whereas Tulsa and Oklahoma City do, and double that.

Haynes said Wal Mart is one of the top five employers in Comanche County, following Fort Sill, Goodyear, Lawton Public Schools, and the Comanche County Memorial Hospital. Wal Mart currently employs over 850 dedicated associates at the existing super center and Sam's Club; 70% or 595 of these positions are full time and the average hourly rate is well above minimum wage. The proposed new super center will increase the number of employment positions to over 1,100; these are good jobs, held by good people who work hard, live in Lawton and spend their money in Lawton. The 2001 sales tax from the existing super center, not including Sam's Club, generated for the city, county and state was approximately \$8.3 million. The city levies a 3.75% tax on gross receipts and they estimate the total revenue to the city generated by the existing super center was well over \$3.5 million for fiscal year 2001 and these figures are for the existing super center and they do not include the Sam's Club. He said the proposed super center will be approximately the same size as the existing store and is projected to generate approximately the same tax base.

Haynes said during the December 18 hearing it was mentioned that Wal Mart does not care about Lawton, that's incorrect, Wal Mart does care about Lawton and all the communities they serve. In 2000 and 2001 the Lawton super center donated over \$738,700 to local charities which include the Kid's Zone \$450,000, Pregnancy Resource Center, Hospice of Lawton, United Way, and AMBUCS \$103,000. In the past year Wal Mart contributed over \$1 million to Cameron University for a new computer system. These figures are not something Wal Mart broadcasts. He said Wal Mart is the largest leading contributor to the World War II Memorial in Washington D.C. donating more than \$15 million to this foundation.

Haynes said numerous companies around Lawton are Wal Mart vendors; Bar S Foods and Goodyear are major suppliers to Wal Mart. Bar S currently operates three production plants and a central distribution service center in Oklahoma, the Lawton plant produces franks and smoked sausage at a weekly capacity of three million pounds and much of this product is sold to Wal Mart in Oklahoma and surrounding states. Goodyear sells tires to Wal Mart and surrounding states. The money sent to Bar S and Goodyear from Bentonville is paid to their employees and then spent by those employees here in and around Lawton.

Haynes said there is no predatory intent toward small businesses in Lawton by Wal Mart; in America there exists the concept of free enterprise and Wal Mart's philosophy is that the customer is the boss, high volume purchase and minimum mark up for sales and maximum discount for the customers. He said Sam Walton's principles of business are respect for the individual, services to the customer and strive for excellence. Wal Mart is committed to the development of a second super center in Lawton. The site evaluation involved his expertise and others who examined the total product; retail marketing managers for Wal Mart conducted thorough reviews on feasibility analysis including demographics, traffic analysis, zoning, utilities, the community itself, and the infrastructure, to determine whether Mr. Horton's site was the ideal site for a super center. The site was found to be ideal because of its location, the access to the public street system and the fact that the site is zoned for the operation of a super center to include an automotive area and garden center.

Haynes said according to the City's records, this surplus property was annexed and zoned with the original 25 acre Ben Horton property on June 27, 1978 in Ordinance 132. The property has been zoned for commercial development for more than 23 years. The surplus property was sold to the City by Mr. Horton for the development of a regional detention facility, and since it has been constructed, the City has determined that the 2.8 acres is surplus and of no further use to the City. The value of the 2.8 acres exceeds \$50,000 therefore the City is required to adopt an ordinance to sell the excess land. Haynes said he believed the council was looking out for the best interest of the constituents by relieving the City of the surplus property and should be commended for this action, and not criticized.

Haynes said the question was asked whether the super center could be built here without the excess property and really the answer is yes, it can be done but it would be built without an automotive center and with a reduced garden center. He said the demographics show the area will support a second super center; this size super center requires a certain lot width and depth to include the main building, the parking lot, the automotive center and the garden center; without this additional property, they could build the super center without an automotive service center and reduce the size of the automotive area. Without the automotive service center, they cannot sell Goodyear tires at that store. It will have a direct impact on annual sales and tax revenues. The existing Lawton super center is within the top 2% of all automotive service sales in the United States for Wal Mart. The reduced building size may result in a reduction of available lease area in the front of the building for uses such as banking, technical training, hair care and so forth. The reduced lot size may also result in a more congested parking lot. He pointed out the need for customers to be able to access the store in an unhindered manner and said they would address traffic flow along 67th and along Quanah Parker Trailway to be sure they had safe ingress and egress, and from the existing residential streets. The site will be designed in accordance with the City's requirements, including landscaping, lighting and sight proof fencing, and sight proof landscaping. He said they proposed to work with staff to close the streets on the east side of Mr. Horton's property in the Crosby Park Estates addition; it dead ends, would be of no value to Wal Mart and would be a dangerous situation if it were left open.

Haynes said they would work with staff to extend the necessary utilities and street infrastructure, including 67th Street improvements, to serve this building and the surrounding area. He said council would be looking out for the best interest of the community by selling the surplus land; although Wal Mart can be built on Mr. Horton's property without the surplus land and the community will benefit, it will benefit even further with the surplus land by the monetary sale of the land which is of no further use to the city's infrastructure, the availability of a full service super center which includes the garden center and automotive center and which will result in higher sales receipts and employment, and an improved traffic circulation in and around the super center site. He requested the council vote against the repeal of this ordinance.

Moeller asked if it was possible they would build the center without the grocery portion. Haynes said no. Haywood asked if there would be 1,100 new positions. Haynes said it would increase the total number to 1,100; part of the positions at the existing super center would be shifted to the new center because they are trained, management is in place and the value of the experience in working there, but the total for the two super centers and Sam's will be about 1,100. Haywood asked if there would be two managers or just one. Ron Stewart, local store manager, said he would remain the manager of the existing unit and there would be another manager at the new

unit; there are currently 18-20 members of management in the current store and there will be a similar number at the next one. Haywood asked how many minorities they had working at Wal Mart. Tim Baker said Wal Mart's total employment around the world is 1.2 million and in the U.S., Wal Mart is the number one employer of African Americans outside of the federal government, but they take great strides to reflect the community make up. Haywood asked about all minorities. Baker said it is close to 50-50 with females and they could get the exact numbers.

Baxter asked if more information could be provided about ingress and egress on 67th Street. Haynes said he was charged with hiring the consultant to work on his team to evaluate everything on the site, including the existing traffic and road conditions. He said staff raised a concern early on that 67th Street is a two-lane road without curb and gutter and in very poor condition. Haynes said his client was committed to do what they could to widen that section of road along the frontage of Mr. Horton's property; there has not been a commitment as to extending the road further north or south but their obligation would definitely include widening of the road up to Quanah Parker and to their northern most property line. He said he hired traffic engineering consultants from Oklahoma City and they have analyzed the traffic counts and will do so again because they had expected more traffic; the consultants will provide a recommendation and there is money in their budget to widen 67th Street along the frontage. Baxter said but not the whole way and Haynes said no.

Hanna said they mentioned closing a road on the east side and asked if there would be any retaining walls or privacy fences on both sides for Crosby Park and Grayson Estates. Haynes said Grayson Estates is west of the site, which is basically the front of the property, and they have laid out site plans to show some additional landscaping along 67th Street to help screen the site but the plans have not been finalized; the first step is to determine whether they can use the 2.8 acres. Haynes said on the east side of the property they would comply with the City's zoning requirements plus they will add additional landscaping of trees and can increase the height of the fence, but they will commit to site screening and landscape proofing along the east property line.

Moeller said one resident asked if it was possible to have a sound abutment wall for the residents on the west. Haynes said they had not studied that issue and an acoustics engineer would be required to evaluate existing sound from the site and what would be required for a wall and they would consider that, yes.

Moeller said it was mentioned that their pay scale was above minimum wage and asked if there was any idea as to the average pay here. Haynes said the payroll for 2001 was in excess of \$9 million to the local employees and the average salary was above \$8.30 per hour.

Cindy Sheppard, 2604 NW Lake Front Drive, Grayson Mountain Estates, said there are two reasons Wal Mart should not go in this area and the city should not aid them in the purchase of the presently city-owned land. The first reason is the present traffic problem in the area; the second is that a Wal Mart in this location will stifle other businesses in Lawton and not be good for the growth of our city. She presented five photographs taken last night at 5 p.m. successively showing the traffic that is south bound on 67th Street at the light at Quanah Parker Trailway; the first photo shows 16 cars in line, the second shows 21, the third shows 17, the fourth shows 22, and the fifth photo shows over 25 cars in line and at least 8 cars are north of the entrance to Surreywood Lane which is the major entrance to Faircloud Addition and those cars are backed up to the entrance to Grayson Mountain Addition. She said if Wal Mart purchases the corner of 67th and Quanah Parker Trailway, traffic will be tremendously increased and 67th Street presently cannot handle any more; the two lane bridge over the drainage area on 67th Street was recently constructed and it took ten months to complete it, during which time the road was closed and all those residents were inconvenienced.

Sheppard said the widening of 67th Street is not on the agenda for the next several years, and you can only imagine the back up of traffic on 67th Street if there was a Wal Mart in this area, and we have already seen the effect it has had on the Sheridan Road area. She said cars will not even be able to exit Rogers Lane because traffic will be backed up all the way along 67th Street, and the residents of Faircloud and Grayson Mountain Addition will be unable to exit their neighborhoods. Sheppard asked if the council was willing to create more traffic problems by considering the sale of this 2.8 acres.

Sheppard said the second point is the negative impact Wal Mart will have on the business environment in Lawton. She said if we want to encourage local ownership of competing businesses and discourage further Wal Mart expansion, then the council will vote against selling the city-owned 2.8 acres of land. Sheppard said Wal Mart had skirted the issue a little bit by not saying for certain that they will build here but have not said for sure that they will not build there, whether or not they have that 2.8 acres; however, they are trying to make us believe that they actually do not need that 2.8 acres and that the land will be worthless if it is not sold to them and that it would be better for us to get the money for that 2.8 acres than nothing. She said she hoped the council would not buy that story because the smaller we can make Wal Mart's operation, the better it will be for the neighborhood and the other business people in Lawton. Sheppard said all the services are already provided in Wal Mart's location on Sheridan Road. She said the city should not contribute to the demise of the local neighborhoods or businesses and selling that 2.8 acres could cause that to happen. Sheppard said by allowing Wal Mart to dominate local businesses, you will lose more than the money you would get in the revenue for that 2.8 acres, that is a one-time

benefit but you will be losing ad valorem taxes on other businesses and possibly unemployed people because of Wal Mart's competition; those losses would continue for a long time.

Sheppard said the citizens have placed their trust in the Mayor and Council and appreciated the time they have spent on this issue, and it is a thankless job but they all want the best for the citizens and she was sure they would make the best choice for the on-going growth of Lawton.

Col. (R) Bob Riley, 6102 NW Lincoln, Crosby Park Estates, said when he moved in his house in 1978 it was all vacant land to the west; there are now hundreds of people who live on both sides of 67th Street. He said the property owned by Horton and the city must be rezoned from commercial to residential only; the residents and voters of the area do not want to be plagued by this problem in the future. Riley said the land was zoned C-3 in 1978 and approved by that city council; the city council of 2002 has the authority to correct what is now an obvious error in zoning. He asked if members had visited the intersection during busy times to observe the traffic on 67th Street and said there is a definite problem, taking three traffic light cycles to get to the highway from 67th Street and this will make it worse.

Riley asked if Wal Mart or any other business wishing to occupy that land would be willing to pay for a four lane divided street on 67th Street, and he said he would wager they would not do so and they mentioned only their frontage.

Riley said there is an environmental problem with drainage from the high ground at Highway 62 and 67th Street; one would think water would flow downhill to the lower areas to the north but it does not. He said his yard washed out three times from heavy rains when he first moved in. Riley said if a gas station is included, there is a problem with leaking contaminants which would flow to Crosby Estates. He said Mr. Malone was the owner of some gas stations and he spent \$30,000 of his own money proving to the city that it was not his tanks that were leaking at 44th Street.

Riley said the residents of the area would be plagued by the attendant refuse and litter problems posed by the business itself and an unconcerned public. He described litter problems in general. He said if you owned a \$300,000 to \$400,000 home in the Grayson Addition, or a slightly less expensive house in Crosby Park Estates, would you want Wal Mart or another commercial establishment directly across the street from you. Riley asked that council consider the concerns of the residents and voters in these areas and asked that the land not be sold and the city could buy Horton's land and sell it to a developer and make over \$1 million; \$20,000 per lot and you can get 50 homes in there.

Dave Davis, 7632 NW Baldwin, said he had no direct ties to Wal Mart and does not live in any adjacent neighborhoods, but lives approximately one mile southwest of the proposed site. He said he is in favor of Wal Mart building a second store at 67th and New Cache Road, and it was his understanding that they would build at that location with or without the 2.8 acres of city land. Davis said he believed we should be pro-business; Wal Mart is not seeking tax breaks or other incentives from the city but only asking for the opportunity to bid on surplus city land to provide additional room for their store. He said a second Wal Mart should provide a positive impact to the city by bringing in additional shoppers from communities to the west; Lawton should also benefit from additional jobs and sales tax receipts and increases in property tax receipts because we are gaining a new business. Davis said he had friends in Cache and Indianola who preferred shopping at the Wal Mart in Altus because of the ease in parking and reduced congestion in that store, but they are excited about having a new Wal Mart in west Lawton.

Davis said the decision tonight is straight forward; should we continue to maintain 2.8 acres of surplus city property at the city's expense, or should we sell the 2.8 acres and use the proceeds to offset current budgeting shortfalls and then add this land to our city tax rolls. He said he believed he represented many west Lawton citizens, perhaps a silent majority, and in his opinion, we should sell the land.

Brad Dobberstein, one of the owners of Country Mart, said he was not against Wal Mart, which is a very good and strong company, and it was indicated that they already have one of the top three or four stores in the U.S. here. He said he, as a small business person, would like to plea how much business do they really need. Dobberstein said they have 240 employees and he had told his story before and he was present on behalf of his family and people and felt obligated to support them. He said they are local and have taken on a lot of debt and are working hard to give the people in Lawton a choice. Dobberstein commended Wal Mart for their donations and said we all know the size of Wal Mart. He said the previous speaker talked about new jobs and revenue but it will only be diversified from someone else to them, so the amount of new revenue is to be questioned.

Dobberstein said they knew they could not keep Wal Mart out, the land is for sale and they can build if they want to. He said his job and concern as a citizen and business owner was to make sure people understand they are trying to provide a choice of a place to shop besides Wal Mart and the commissary.

Dobberstein said it seemed very obvious that the tide has changed since the last meeting when it was almost unanimous that the ground would not be up for bid and it could be voted down. He said that was almost a

unanimous feeling the last time they were here and it is very obvious that there was a motion made tonight that did not even get a second so he would like to ask what changed their minds.

Ken and Kim Isaacs, 310 NW Compass, said they operate a small business at 2322 W Gore Blvd. He said the whole procedure seems to be getting out of hand and we should stop and use some common sense; the item says to consider an ordinance to repeal an ordinance, which means the council has already voted on this and approved to sell the land. Isaacs said the thought tonight is to change directions. There are people who do not want Wal Mart in their backyard, they are all for economic development and growth as long as it is not in their backyard. Wackenhut was considering a prison here several years ago and the NIMBY's came out but now that it is here, we do not hear anything about it so maybe it was not as bad as they thought it would be. Isaacs said 65th and Gore was another potential Wal Mart site, which is two blocks from his house and he would like to have it there so he could get there and back home quickly.

Isaacs said the land has been zoned commercial for 23 years and anyone who did not like that could have approached their council member to start the gears in motion to have it rezoned, but it is only a concern now because it is being sold. He said he assumed most of the houses were built or bought long after the commercial zoning was in place, and asked if the residents did not consider that when they moved there. Isaacs said it is natural for any city that is growing to develop to the outskirts of town and that is what is happening here; if they wanted to live on the outskirts of town, they should have looked at what they were building next to. He said there is a legal process set out in the code to allow people to move to block this sale by collecting signatures on a petition that they had 30 days to stop the sale. Isaacs said that date came and went and they did not have enough signatures to stop the sale so those who oppose it said they could not get the needed signatures because it was the holiday season, but this issue has gotten a lot of press and if there are others who did not want this, they would have come forward and found the petition to sign but that did not happen because there are not that many people in Lawton who do not want the Wal Mart, yet there are more who do want it.

Isaacs said the others who are complaining tonight are the business owners and he did not know how a business owner could ask the council to keep the competition out, which is what it boils down to. He said he had experience in this area when several years ago a Staples and an Office Depot located here within weeks of each other, and many told him he would go under as a result. Isaacs said his business is still here, it is growing and getting better. He said the reason is they know their clients and the services they want, and they offer something the others do not. Isaacs said the Country Mart owner could study his clients a little more because Lawton is not a big town and you can drive from one end to the other in 15 minutes, and whether a Wal Mart is located two blocks or two miles from a Country Mart, the people who show at Country Mart will do that no matter where the Wal Mart is located. He said he regularly refills his prescriptions at Country Mart, although it could be cheaper at Wal Mart, because he knows the pharmacist at Country Mart and he will drop what he's doing and run across town to get something for a customer. Isaacs said Wal Mart does not do this, and it is all in knowing your customers. He said if a business is not doing right, they will go out whether Wal Mart comes or not.

Isaacs said he apologized if he had stepped on toes or hurt anyone's feelings, but one point is, in the economic development community, Lawton is considered a joke, considered hard to get along with and difficult. He said when the council entertains a forum such as this, which is to reverse a decision that has already been made, it puts forth a message that this city is hard to deal with and that is why we are considered a joke. Isaacs said he was not saying people did not have the right to come forward, this is America and we all have rights. He said when we publicly entertain thoughts of ignoring procedures just because a few people did not get their way, we just enhance and increase the image the outside world has of us.

Isaacs said large corporations such as Wal Mart, and others that might locate here and enhance and increase our economic basis in Lawton, expect some resistance, and he was sure there was resistance in every city Wal Mart was going in to, and they have ways of dealing with it and it does not bother them but when the council starts to help them and then turns around and works against them, organizations like this have to think why even bother with Lawton. He read a legal definition of the word "precedent" and repealing this would set a precedent, there were legal ways the people could have stopped the sale but that did not happen and if the council foregoes the regulations and codes to reverse this just because a few people did not get their way, we will be setting a serious precedent for any new future businesses. Isaacs said any time a new business tries to come here, the existing businesses will come in and ask you to stop their competition from coming in and legally the council would be bound to do that and he did not think we want to go down that slope. He asked that council consider this seriously before voting to overturn their previous decision.

Mr. Monostori, 2303 Crosby Park Boulevard, asked that the council not sell the 2.8 acres to anyone and said it was supposed to have been a park or walkway and that has not happened yet. He said traffic is bad in the area and he agreed with previous speakers in this regard. Monostori said if Wal Mart is concerned about the community, they are not concerned about the two housing areas and they will stick out like a sore thumb and did not belong between two housing areas. He said there is one way in and one way out of Crosby Park Estates, and asked if Wal Mart would provide a guide for people who get lost in that area or fix the potholes on the street from the traffic they will create. Monostori said in this country a female is not a minority. Mayor Powell asked that comments

pertain to this subject. Monostori said we have equal rights and Wal Mart was not concerned about community because they are going to put in the store whether they like it or not.

Baxter said he thought he was on the short end of the fence but would speak anyway. He said he knew Wal Mart did a lot of great things for the community but they cut down the days the United Way could take donations in front of their store in half, so they are fine but sometimes they penalize us too. Baxter said he thought closing the road was good if they were going to move in anyway, but he did not think Wal Mart had told the council they were going there anyway and Purcell had not gotten the answer he wanted yet. He said he did not think anyone said they would spend the money to make a four or five lane road on 67th Street between Quanah Parker and Rogers Lane and if we do not do that, it is not going to be a good deal and he would appeal to council to listen to the people, the majority are standing in the chambers today.

James Stevens, 6007 NW Lincoln, thanked the mayor and council for bringing this item back and said they did so because they knew in their hearts that it was not properly publicized to begin with. He thanked Purcell for his question, and Moeller, and the others. Stevens said he was not making a statement one way or the other but wanted to act as a voice for reason; the gentleman stated if they could not buy the 2.8 acres they would reduce the size of the store, not be able to open a fully developed garden center or a tire center, making mention of Goodyear products and everyone knows that Goodyear is a major player in this town. He said it stands to reason they also said this is the third largest city and they had done surveys and knew they could make money in this town. Stevens asked why they would reduce the size of the store, make less money, rather than move to a better location because information was already provided about the traffic problems. He said he did not want to be a NIMBY but he resides in this area, however, he was trying to be a concerned citizen and look for the welfare of the whole town, which he thought the council had in mind.

Stevens said we also addressed the issue of increasing the roadway to facilitate the traffic, putting up sound barrier walls on both sides of the roadway, and he was not a business person but felt the money could be better used to find a different location to develop where it would be more conducive. He said the money they would save by not doing these modifications could be used to build at a different site.

Perry Calton, 2411 NW 68th Street, said he may soon have a Wal Mart in his back door and he had a lot of frustration and anger. He said he lived here 15 years, worked hard and saved and bought what he thought would be his dream home and now finds Wal Mart may be at his back door. Calton said we are talking about having to build big walls to cut down the sound which seems something is not fitting. He said he was in Wal Mart today, shops there all the time and does not have a Wal Mart problem, and did not know if it was a 2.8 acre problem or drainage problem or any of those things, but it sounded like it was zoning problem because this is not the right place and if it was, it would fit a little better. Calton said he usually sees Wal Marts on interstate highways with parking and access and did not understand why they were trying to cram it in this small area. He implored council to please repeal the ordinance and spoke regarding freedom and the prices paid for it and the limits on freedom of speech. Calton said he did not believe Wal Mart was trying to break any laws but wondered if they realized how much they were contaminating and insulting what is now his neighborhood and a man at the existing Wal Mart had a sign saying he was broke and hungry.

Calton said he believed the council had the right to rezone the property and it was brought up that the zoning took place 23 years ago and asked who had any idea 23 years ago what a Wal Mart super center would be. He said it made sense back then but we are now here 23 years later trying to put a Wal Mart in a place that it does not fit and the council knew that. Calton said he left a voice mail for Tim Baker suggesting other great properties but did not get a return call. He said the 2.8 acres probably would not stop Wal Mart, it might slow them down, they would not build a road or improve 67th which he uses to take his daughter to school and has to wait through three lights to get out. Calton asked that council repeal the ordinance and rezone the property.

Mayor Powell said we are hearing some of the same things over and over again and he would not put a limit but would like speakers to get right to the point.

Herbert Derricott, 6212 NW Cheyenne Drive, said some of the things he had heard this evening disgusted him. He said he retired from the Army and moved to Lawton because he thought it was a thriving city and that his children could grow up here, go to college and have a job. Derricott said some people say "not in my back yard" and he had experienced that with a storage facility and that is no problem, he got it resolved, but the people in Lawton want businesses to locate here. He said we lost the opportunity to have one business here because of a stupid type of ordinance. Derricott said he had heartburn with some of the businesses in Lawton and they do not have any competition to make them act fairly. He said he tried to buy a \$31,000 car in Lawton but the business did not want to cooperate so he drove to Oklahoma City and bought it because of unfair competition; there are businesses here that do good business and he buys groceries from Country Mart and also shops at Wal Mart because they do good business and the same with the commissary. Derricott said he was tired of paying excess taxes for businesses not coming here; this is an opportunity for growth and the way things are going he was thinking about moving out of this city because nothing is being offered here because we have a few businesses and a few selfish people that want to control everything that goes in Lawton and it is the good old boy system here and we need to break that.

He said selling that 2.8 acres of land will get it off the city property and we will not have to maintain it. Derricott said Wal Mart is a good company and he liked the way they do business and we should sell the land to them and get it over with. He said he lives in one of the wards where Wal Mart will be built and the mayor and council should do what they know they should and that is to protect all of the citizens of Lawton, not 100 or 15 but all citizens and bring growth to this city so we can move on and stop staying behind Norman, Tulsa and Oklahoma City. Maria Rivera said she works for Country Mart, and has friends who work at Wal Mart. She said from her experience with her immediate friends and family, she has had a negative impact on her family and friends from them being employed at Wal Mart. Rivera said they make significantly lower wages than at Country Mart, and opportunities are greater at Country Mart than at Wal Mart.

Mayor Powell asked for discussion by the council members.

Purcell said he talked to eleven people last night; he talked to people at Wal Mart and was led to believe whether or not the city sells the 2.8 acres they will build there, and he told everyone if Wal Mart is going to build there anyway, he would agree to continue to sell the 2.8 acres; however, if Wal Mart is not going to build there without the 2.8 acres, then that is another issue. He asked for an answer from Wal Mart representatives, and said he had heard three times that they can build there but had not heard anyone from Wal Mart say they will build there if the city does not sell them the 2.8 acres and he needed an answer to that.

Tim Baker said he was here to answer that, and that he did not mean to be evasive but did not want to deal in absolutes, but yes, we will still build the store whether we have the 2.8 acres or not. He said they wanted to participate in the process and make reasonable accommodations to all the concerned parties, but yes, they will still move forward irregardless of the 2.8 acre strip of land at that precise location. Purcell said even if we say no tonight, you will still build the store there is what he heard him say. Baker said that was correct.

Baker said if he could address Baxter on the Christmas fund raising in front of the stores, due to the National Labor Relations Board guidelines, they were precluded and could not have the Salvation Army outside as many days as they would have liked; they had an exact number of days allowed and did the maximum days the NLRB and its guidelines would allow. He said they did more days in the past but could not do so any more and it was a government issue rather than one of their own choosing.

Purcell said based on the answer he received, he would say the same thing he told everyone on the phone; it is irresponsible, if they are going to build there anyway, he could not say he would not sell the land that we do not need, we have already declared it excess, it does not preclude them from building so you will have the same problem there no matter what, and it means the city gets to maintain the property forever and we will not be able to reap the benefits of being able to get some money back. He said he was just saying how he felt, if he could stop it, he would, but we cannot stop it, the land is zoned properly and there are all kinds of things if we even tried to rezone it, and everyone in the audience would see an increase in their ad valorem taxes when we get the inevitable action that would come of that; once you zone something C-3, you cannot ever go back basically. Purcell said he did not know who in the audience he had spoken with on the phone but was saying the same thing for the record tonight.

Moeller said she was beat up yesterday with phone calls all day long, and did not mind as long as everyone was cordial and was calling to give their input. She said she received a tremendous amount of calls and e-mails, and 60% were in favor of Wal Mart coming, and people in Hunter Hills were saying bring them on. Moeller said for those who were opposed, it was specifically because it was for Wal Mart. She said we cannot stop Mr. Horton from selling his land, that is not our right to do so, it is not our right to stop anyone from selling their land, if he has a buyer, it is not a process we should interfere with and the only thing we can control is the 2.8 acres. She said the street was a big concern and she travels it all the time and has seen the traffic. Moeller said Wal Mart indicated a willingness to cooperate and at least do a part of the street up to the property they own, and if they do half and the city can find the money to do the other half, that would be great, whatever it takes to relieve the stress on the street which cannot carry any more traffic.

Moeller said most of the calls she received were from her area and most wanted the Wal Mart. She said she could understand the fear of the residents and had similar feelings when Homeland was built on 67th but when they called and said the lights were bothering the neighbors, they put shields on them; they pick up their litter and are wonderful neighbors, and fear of not knowing what is going to happen is the worst thing. She said if this goes forward as it seems it is going to, if Wal Mart plans to build there whether we sell the land or not, she would trust them to be a good neighbor and would be the first to fuss at them if they are not. She said we need businesses that will be residential friendly. Moeller said she would continue to shop at Country Mart, Homeland and United, and would support those stores hoping they will remain in business. She said the land to the north was supposed to be a park as far as she knew, and the sound abutment wall was a suggestion from a citizen.

Sandra Montgomery asked if Wal Mart surveyed any other properties and if so, was there any controversy about them. She continued to address the Wal Mart associates in the audience. Mayor Powell asked that comments be addressed to the council and said we have listened to 14 people this evening and have been very liberal.

Montgomery said they had not addressed other areas, why they are so persistent on putting it in a residential area that nobody wants them in. Moeller said Wal Mart had looked at other locations and taken core samples, and did not know the specific reason for selecting this site but knew they had looked at more than one.

MOVED by Bass, SECOND by Hanna, not to adopt the ordinance repealing Ordinance 2001-34 adopted on November 27, 2001.

SUBSTITUTE MOTION by Baxter, to approve Ordinance No. 02-01 which will repeal Ordinance 2001-34, waive the reading of the ordinance and read the title only please.

Mayor Powell said the substitute motion died for lack of second and asked for roll call on the original motion not to repeal.

VOTE ON MOTION: AYE: Bass, Hanna, Devine, Purcell, Shanklin, Moeller, Haywood. NAY: Baxter. MOTION CARRIED.

Purcell said last time they instructed the City Attorney when they went out for requests for sealed bid proposals, he wanted to make a motion to direct the City staff to go out with a notice of sealed bid that the minimum bid acceptable will be \$200,000.

MOVED by Purcell, SECOND by Baxter, to direct the City staff to go out with a notice of sealed bid that the minimum bid acceptable will be \$200,000.

Shanklin said the minimum bid would have to be the amount paid for the other land. Purcell said we do not quite know that so he was using the figure of \$200,000 and if someone knew a better number that would be fine.

Terry Haynes asked the City Attorney for a ruling. Vincent said the council can give staff direction right now; the resolution that was passed authorizing the sale was to direct staff to prepare a minimum bid price in the notice; staff has established a minimum bid price in our mind somewhere in the area of \$145,000 to \$147,000 and if council wants to up that they certainly have the right to do that. Haynes asked if they had the legal right to do that and Vincent said yes sir.

VOTE ON MOTION: AYE: Hanna, Devine, Purcell, Shanklin, Moeller, Baxter. NAY: Haywood, Bass. MOTION CARRIED.

Vincent said they would notify the newspaper tomorrow to publish a notice for sale by sealed bid; this is not guaranteeing Wal Mart will be the successful bidder and anybody that bids in excess of \$200,000 could be the successful bidder, it will be the highest bid, and bids will be opened on January 22, but the notice will be published and posted in four public locations.

Mayor Powell requested, in view of the fact the council and he was accused of doing something dishonest and illegal last time, please advertise this with the legal address as well as the street address. Vincent said he was not sure it had a street address and Mayor Powell said you can described it as "the corner of" and Vincent agreed. Mayor Powell said he wanted nothing hidden and no possibility of being accused of that in the future.

Upon motion, second and roll call vote, the Mayor and Council recessed at 8:20 p.m. and reconvened in regular, open session at 8:30 p.m. with roll call reflecting all members present.

Mayor Powell asked that Business Item 39 be considered at this time.

39. Consider authorizing staff to negotiate with the Town of Elgin for the sale of treated water. Exhibits: Letter. Mayor Powell said Larry Thoma, Elgin's Mayor, contacted him requesting they be able to start negotiating to purchase water from Lawton. He encouraged the Council to move forward in that direction.

MOVED by Purcell, SECOND by Shanklin, to authorize staff to negotiate.

Baxter recommended a council member be present at the negotiations. Mayor Powell said Shanklin has always shown an interest in water and would be invited to attend.

VOTE ON MOTION: AYE: Purcell, Shanklin, Moeller, Haywood, Baxter, Bass, Hanna, Devine. NAY: None. MOTION CARRIED.

Mayor Powell asked that Business Item 36 be considered at this time.

36. Consider request submitted by Mike Scott of Scott's House of Flowers for the City's participation in sanitary sewer line relocation at 1353 NW 53rd Street and, if necessary, take appropriate action. Exhibits: Letter; Map; Letter; Agreement.

Bob Bigham, Planning Director, said a request was received from Mr. Scott for the City's participation in a cost sharing agreement to relocate a sewer line at 53rd and Cache Road. The commentary shows a list of items Scott recommended for a cost sharing agreement; staff suggests it be handled like the Burk agreement where the city provided materials and Burk installed the pipe and manholes.

Shanklin asked who laid this line in the wrong spot. Bigham said the Country Club plat was filed before the city regulated the subdivision of land; there was no inspection process and very little plan approval. Bigham said this is at the east property line of a platted lot and there is a ten foot utility easement, but behind it is the Meadowbrook Creek where the land drops off very quickly and they put the sewer line on the flat property and did not get it within the utility easement. Shanklin asked if any concrete was poured over the sewer. Bigham said some of the parking area, yes, but Scott's expansion will be over the existing sewer line which is outside of the utility easement.

Shanklin said it was not Scott's fault that the line was placed incorrectly. Bigham agreed and said the proposal is to install a sewer line that Scott can tie into and to abandon the existing line. Shanklin asked if anyone else was tied to the existing line. Mayor Powell said Circle K is tied in, and there was no doubt the city was negligent in installing the line many, many years ago and now Scott's wants to expand, but to further complicate it, Circle K ties into it, so if the line is moved to the front of the building, you have to do something about Circle K and it is not their fault either. Shanklin asked if the existing line could continue to be used and install a new one as needed in the future. Bigham said you could potentially have a collapsed sewer line with a building on it, and the time it would take to get those people back in service would not be acceptable.

Hanna asked if Circle K had been asked to bear any expense of tying the lines back in. Bigham said he had advised Circle K of Mr. Scott's request and no requests have been made to Circle K. Hanna said it appears to be a mistake the city made some years ago. Bigham said he would disagree to some extent because the developer installed the sewer line. Hanna said the city approved it or accepted it but now we are telling the two businesses to pay the expense to put it in the way it should be.

Devine said the city has let the problem exist for all of these years and had more than ample time to change it; he did not think it was Mr. Scott's or Circle K's responsibility to foot the bill to straighten out something the city has done. He said he felt the city should put in the sewer main and tie Circle K on at the city's expense. Devine said Burk has a cost sharing agreement but the city should have built the line around the building for him.

Mayor Powell said there could be a time problem doing it in-house, but putting it out for bid could delay Scott's expansion. Devine suggested the city accept the responsibility for putting in the sewer line, let Scott build and leave the existing line there, and if it takes six or eight months to get the new line in, then we can do that and abandon the existing line at that time.

Bigham said the other portion of the agenda item was to determine a funding source; on the Burk agreement the council used the mayor's 231 account for economic development, and that is a possibility. He said he was hearing the council wanted to go beyond Mr. Scott's request and he still recommended an agreement be done spelling out who would do what and have that on the next agenda.

Mr. King, Maintenance Supervisor for Circle K, said they were not aware of this until Bigham contacted them. He said they replaced their sewer line to this main about two years ago and their opinion was they did not want any responsibility for that sewer line and they had already been out an expense on their own line.

Purcell said 40 years ago someone screwed up, including the city, and you might as well just say it then fix it. He said Mr. Scott should be helped and Circle K should not be penalized and the city should pay to put in the line and reconnect Circle K, and Scott can connect his like anyone else would.

Shanklin asked why this would not fall in the sewer rehab that is taking place since we are repairing sewer lines as we come to them that did not show up. Baker said this line was not identified in the program sent to DEQ; if sewer rehab did the work, it would be appropriate to reimburse that fund from other city funds, or ask DEQ if it could be added to the program. Shanklin said he had watched those crews do pipe bursting and they could run a line quickly by that method.

Jerry Ihler, Public Works Director, said the line is not identified in the sewer rehab program, although there are some high maintenance lines they could put it in with, but sewer rehab could construct it in about a week; wastewater maintenance/collection crews could construct it in two weeks. He asked if the fund would be reimbursed for materials, labor and equipment, and suggested it would be easier to do it with the wastewater maintenance/collection crews and therefore the funding source responsibility would be for the material only which would be about \$5,000 to \$6,000. Shanklin asked if it could be done by pipe bursting, leaving it where it is, rather than tearing up the asphalt parking lot. Ihler said he could not recommend having a building on top of a sewer line.

Mayor Powell said he thought the figures were good and Baker said it can be done in-house with the money coming from economic development, although he disagreed with that funding source but would yield to it, and asked if a

motion was forthcoming.

MOVED by Devine, SECOND by Hanna, to take care of this for Mr. Scott and take it out of economic development.

Mike Scott asked if the motion is to accept his proposal or to do the whole thing. Devine said they are going to do the whole thing. Vincent said the \$5,000 to \$6,000 is for the sewer itself and the connection to Circle K. Mayor Powell said Scott agreed to do the parking lot himself. Scott said the city would put in a base and he would do the asphalt and Mayor Powell agreed. Vincent requested the motion be amended to include a minimal agreement basically going along with what Mr. Scott's letter says but full participation by the city instead of partial. Mayor Powell said he would clarify, Mike Scott will provide the following: having an attorney draw up an agreement for the new sewer line, provide a 15 foot utility easement, pay for ODEQ permits, provide engineering plans for the relocated sewer line in front of the building, resurface Scott's parking lot after relocation of the sewer line, and he asked if that was all acceptable and Scott said yes. Mayor Powell said that needs to be part of the motion, as well as for Circle K to be connected to this.

Scott asked if the other issues, such as indicating the easement is for sewer only, be included so no one else can come through the area and cut it to put in wiring or anything else, and will the prescriptive easement be released or vacated in the back, and said those things were part of his proposal. Mayor Powell said they are included.

Bass asked for an explanation of prescriptive easement. Vincent said it is where the city or any government entity has been using property for a period of time with the knowledge of everybody else, there is no time limit like on adverse possession which is basically 15 years but there has to be a reasonable time, it cannot be just over night, and in this case we have been using this property for a sewer line for over 30 years so we would definitely have a prescriptive easement in his opinion.

Purcell asked if it was acceptable to restrict use of the easement to sewer line only. Ihler said if the street is widened the city would have to buy right of way, but he preferred the easement be restricted to the sewer line to allow for ease of maintenance without having to go around other utilities that might be located there. Baxter asked if this would prevent the future widening of 52nd Street and response was no but the city will have to buy an easement to do so.

Mayor Powell said there is a motion and second, and it includes taking care of Circle K as well.

Bigham said Vincent suggested a minimal agreement be prepared including all the items in the motion and asked if that was council direction. Devine said that was agreeable as long as no one started changing things in it. Vincent said if the agreement were included as part of the motion it would not have to be brought back to council. Devine asked that it be part of the motion as long as Scott agrees.

Baker asked the cost estimate and Ihler said \$5,000 to \$6,000 for material only. Baker asked if that included reconnecting Circle K. Ihler said yes. Baker suggested as part of the motion that staff be able to transfer funds from the mayor's economic development back in to Public Works to pay for this cost. Devine agreed to include that in the motion.

VOTE ON MOTION: AYE: Shanklin, Moeller, Haywood, Baxter, Bass, Hanna, Devine, Purcell. NAY: None. MOTION CARRIED.

UNFINISHED BUSINESS:

30. Consider the following damage claim recommended for denial: Mike and Nancy Lydens. Exhibits: Claim Memorandum/Recommendation dated October 26, 2001 and December 10, 2001.

Vincent said the claim was sent back to try to develop a cost share between the mold infestation problem and the damage that may have been caused by the sewer backup. Tim Wilson, Assistant City Attorney, said an estimate was provided for \$6,682.83 to recarpet the entire house. A second estimate was requested for the master bedroom and hallway since those were the areas affected by the sewer backup and an estimate of \$2,831.10 was received for two baths, which should be two bedrooms and is a typo, the hall, living room, dining room and den. Neither estimate accounts for depreciation, and the claimants provided no bills for the cost of clean up. Wilson said he asked Cobb's Carpet what the square footage was for the bedroom, hallway and a closet in the master bedroom, and the hallway was shown as eleven by eight feet which was likely wrong, but using the information they provided, he came up with 49.8 yards, multiplied by the price of the carpet of \$16.99 per square yard and came up with \$846.10, and counting depreciation for two year old carpet, the reduced amount was \$736.11. Wilson said he still recommended denial of the claim, but recommended nothing more than \$736.11 be paid if council desires to approve the claim.

Michael Lydens, 1520 NW 43rd Street, said they cannot match the existing carpet; the first estimate was to replace all the carpet and Wilson asked them to get a second estimate. Lydens said Cobb's told them the carpet should be replaced where the hall goes into the bedrooms and living room because of the tracking in the water, it is wide

open and there are no doorways to slow it down and it went through the padding. Bass asked if the Lydens were satisfied with the \$2,800 estimate and Mr. Lydens said yes. Moeller asked if the \$736 estimate included the padding. Wilson said he converted the numbers Cobbs had provided, which included everything. Mayor Powell asked if \$736 was for 49 square yards of carpet. Purcell asked if it included the hall and Wilson said no. Bass asked if the \$2,800 estimate included the hall. Lydens said the house is 2,100 square feet. Wilson said county records show it is 1,384 square feet. Lydens said they had add ons to it; it is a three bedroom, three living area with a dining room and a wash room and he could not say the amount of square footage that was added. Mrs. Lydens said it had been done before they bought the house.

Shanklin said he had never paid \$17 a yard for carpet. Baxter said he had not either. Mayor Powell said the comments show it will do two baths, hall, living, dining and den only, and that is \$2,931.10, and that Bass had asked the claimants several times if they would be happy with that amount. Mr. Lydens said yes. (It was noted that the correct amount was \$2,931.10 rather than \$2,831.10.)

MOVED by Bass, SECOND by Devine, to approve this \$2,931.10 and adopt the resolution.

Shanklin said that would be for about half of the house. Bass said we do not know how much of that water seeped throughout the house or how much of the carpet that got wet. Baxter said \$17 a yard was not reasonable, he had built a brand new house and his carpet was \$12 a yard, and the claimants could go back and buy \$7 a yard carpet. Haywood said that would be their option. Baxter said it is the taxpayers' dollars. Further discussion was held about the size of the house and which areas were to be recarpeted. Mayor Powell said the claim started out at \$14,000. Purcell said we are carpeting one bedroom, one hall, one living room, one dining room and one den only but not two bedrooms and the other living area; Mr. Lydens agreed. Devine said the city is settling the claim regardless of whether they put down the carpet or not; we are getting a total release and it is up to them as to what they carpet and the city is coming out on the cheap end of it. Shanklin said the insurance carrier said it was not mold and they would not pay for it. Devine said we are not talking about mold, we are talking about sewer backup.

VOTE ON MOTION: AYE: Moeller, Haywood, Bass, Hanna, Devine, Purcell. NAY: Baxter, Shanklin. MOTION CARRIED. (Note: Baxter passed on initial roll call.)

(Title only) Resolution No. 02-9

A resolution authorizing and directing the City Attorney to assist Mike and Nancy Lydens in filing a friendly suit in the District Court of Comanche County, Oklahoma, against the City of Lawton; and authorizing the City Attorney to confess judgment therein in the reduced amount of Two Thousand Nine Hundred Thirty One Dollars and 10/100 (\$2,931.10).

31. Consider adopting a resolution setting a two hour parking limit in the Library Plaza parking lot. Exhibits: Resolution No. 02-____.

This item was stricken and not considered.

BUSINESS ITEMS:

32. Hold a public hearing and consider an ordinance closing the park in Morford Hills Addition, Part 2. Exhibits: Ord. No. 02-01; Application, Location Map; Council Policy 5-1.

Bob Bigham, Planning Director, said the Planning Department received an application submitted by the Morford Land and Leasing Company to close this park. He presented a map showing the park in question, 38th Street, Baltimore, 34th Street, and a vacant area. The Morfords have a subdivision proposal called The Enclave and elimination of this park would assist in the development of that area. Notice was sent to property owners within 300 feet and letters to utility companies; responses have been received from Reliant Energy and Southwestern Bell which have no objections; comments were not received from Public Service or Lawton Cablevision. Bigham said it is anticipated that if council passes an ordinance closing this park that the Morfords will petition the District Court to vacate this.

Purcell asked if this is an excess park that the city does not need and it would be one less park that crews would have to mow, or if the park was needed. Kim Shahan, Parks & Recreation Director, said the Parks & Recreation Commission and the department recommended disposing of it.

PUBLIC HEARING OPENED.

Hyman Copeland, 3405 NW Baltimore, distributed pictures of the park and neighborhood. Shanklin said that was not necessary and they were going to close the park. Baxter asked to see the photos.

Copeland said in 1955 Robert B. Morford, Jr. and Leona Morford presented a plat for Morford Hills Part 2; the Morfords owned most of the quarter section of land and eventually platted where hundreds of homes have been built. The park was built as a result of the 1955 plat and it is directly behind Copeland's house. He said in 1962 he moved into 1527 NW 33rd Street where his family resided until 1977 and he played in this park as a child.

Copeland said in the whole quarter section, the Morfords gave three parks to the city and this is one of them. He said in 1987 when he moved back into Lawton, he contacted a realtor, wanted to be in Morford Addition, found this house and one of the primary reasons he decided to buy it was because the park was behind it. Copeland said in the last 14 years he had taught all three of his kids to play baseball in that park, his son to play golf, and the neighbors had done the same thing; Westwood School has used the park for practice, it may be an undeveloped piece of land but it is a neighborhood park and over 50 homeowners in Morford Hills Part 2 were told when they bought those lots that they were getting that park in their addition.

Copeland said notice was given to people only within 300 feet, pursuant to city ordinance, but it affects more people than that. He said when council gives the park back, like one member already said they would do, it will affect everyone in the addition and when they sell or refinance their house, they will have a cost to pay for these people deciding they want the park back because it will have to be added to the abstracts. Copeland said they will have a pecuniary loss as well as a loss to the value of their property, especially people like himself where the park is directly behind his house which was one of the main reasons he decided to buy there.

Copeland said the Morfords decided to develop The Enclave several years ago; they put together a plan and included in it were two lots in the park that they presumed the city would give to them that they could sell and make a profit from. He said the park people did nothing for the people in Morford Hills; they did not contact the residents to say it was being considered. Copeland said they only learned of it accidentally at a neighborhood watch meeting last April and then started a campaign writing to the Planning Commission about their concerns and attended a meeting and were told it was still in the planning phase; the day before that meeting, the builder was bragging they were already selling lots in this platted area that had never been approved for platting by the Planning Commission. He said that was their first chance for input, and it is inherently unfair to those who have this in their plat to know nothing about it until the city has already cooked the deal and he did not like it or think it was fair. Copeland said everyone in the addition should have received notice and several people attended the Planning Commission meeting.

Copeland said everyone he had talked to in Part 2 was opposed, with the exception of the builder; people in Part 3 who oppose it include Mark Ashton, Ms. Troupe, Steve and Staci Robinson, Ms. Williams, Robert and Sherry Conwell, the late Dale Thompson and his wife oppose it, and everyone he had discussed it with, except the developer and builder, oppose this park going out of inventory.

Copeland said at the Planning Commission meeting it came to light that apparently a few years ago the city considered doing away with excess parks, and the Park Board developed a list but the council canned that. He said it was not right for him and his family to have to give up some of the rights they paid for when they purchased their home so these people can profit by selling two more lots in a new addition. Copeland said they argued at Planning Commission that they would have a park inside of The Enclave, and that is fine, but where are the keys to The Enclave going to be when he wanted to go in there; they will not be there; they are talking about a gated community and their excuse for getting rid of this park is we will give you one in The Enclave.

Copeland said it is inherently unfair to him and the people in Part 3 that back up to it and all of the residents in Part 2 and requested the council reconsider, although it sounded like some had already made up their minds, to reconsider and let them use the 28 acres they already own to develop.

Shanklin said he assumed Mr. Copeland was representing the developer and that was an error on his part and he apologized for it. He suggested this be tabled to allow Copeland to come back with a list of people and a petition and see if that many people disagree because right now he would have to agree with Copeland's comments.

Mayor Powell asked if we are supposed to notify all of the residents. Vincent said proper notice was given and if the item is to be tabled, it should be to a date certain due to the public hearing. Shanklin said he would wait until hearing all of it and wanted to apologize to Copeland for making the remark he did, he just assumed it was a cut and dried deal, and that he did not have enough information.

Copeland said the last issue is one that may need to be directed to the attorney; he questioned how Morford Land and Leasing Company has standing to request that the park be closed. He said this addition was not formed by the Morford Land and Leasing Company; it was formed by Robert B. Morford, Jr. and Leona Morford, and he questioned the standing for this company to ask that they be given a piece of land that their forefathers, as individuals, gave to the city once before.

Bass said he and Copeland were good friends and there is a park with a playground less than a block from Copeland's house. Copeland said there are three parks in the Morford Hills Addition in the 160 acres. Bass said ever since he had lived in that area there had never been a back stop or anything on this so called park, and there is a park a block away. Copeland agreed and said it was not behind his house. Bass agreed with that. Copeland said it was not the reason he bought his home, one of the reasons he bought his home primarily was because that park was behind it. Copeland said Moeller could tell you, as a realtor, when you show a home, you say a city park is behind here, do not worry about it, no one is ever going to build behind you, look at the view of the mountains.

Purcell said there was a thorough review in about October 1999 as to which parks were needed, and there was a comment period, signs were posted about closing parks and so forth. Shahan said it was prior to 1999. Mayor Powell said it was during his first year in office. Purcell said a list was developed after 60 or 90 days, and after all comments were received, the council designated certain parks as excess and it was his understanding that this is one of the parks the council said was no longer needed back at that time. Shahan said that was correct. Purcell said there was a very long comment period but now when it is time to declare this is one we did not want, now we are back doing it again when comments should have been made when that was going on before.

Shahan said the Commission and staff positions are based on Bass's comments that there are three park areas within that neighborhood and this property is an open space, and the gentleman said it was used for golf and those types of things which are park uses but the Commission's position was that because there are two existing park facilities, one being already with equipment in it, that it would be appropriate to close this park.

Baxter asked if The Enclave can be done with the city park remaining as it is. Joe B. Reeves, attorney, said Landmark Engineering is studying that and felt it could be. Reeves said 47 years ago this week, Morford Addition Part 2 was dedicated and contains a provision that title will revert to the owners if the property is not maintained and used for public park purposes by the City of Lawton. Reeves said there was a study and in October 1999 the Parks & Recreation Commission recommended this be declared surplus property.

Reeves said this is a family corporation and Dr. and Mrs. Morford are present, and he is the successor and trustee of his parents' original development of this through the current entity. He said on learning of that, they simply apprized the city of this reversionary interest, and realtors and attorneys and anyone who reads abstracts would see and know that there is some potential that if the city does not use and maintain it that it can revert. Reeves said there are almost three and a half acres of park in this area and in memorandum of February 16 from the City Planning Department, this is more than is required and even if this subject park is released, there is still sufficient dedicated park land for the Morford Addition. He said they were proceeding under further guidelines from the Planning Department in May where they requested this matter be resolved first before going forward with development of The Enclave.

Reeves said The Enclave is a development which will depend on certain elements beyond Morford's control, primarily the 38th Street expansion and how much is off of it and how it is developed, so that was why he would hedge a little bit on giving an absolute answer to the question. He said it is probably workable, it is planned to be done in phases, and if it is fully developed on the 26 acres it will consist of 82 single family residential lots. Reeves said the park issue must first be resolved before presenting the rest of the development for consideration. He said as far as the legal notices, they had complied with all the ordinances and applicable statutes. Reeves said assuming you vacate the plat, the Morfords will have to file an action in District Court, there will be notice given again and opportunity to be heard, and there could even be appeals relating to that decision. He asked that this hearing not be continued and that he believed some of the concerns of the people mentioned had been resolved since the first meeting. Reeves said the Morfords have never had a hidden agenda and he could appreciate the Copeland family's concern but their abstract reflected the possibility of reversion and there are more than adequate parks in close proximity to their home.

Baxter said he used to live across the street from this park and played in it as a child but always wondered why all of that land had not been developed. He said he supported having The Enclave built and then doing what was needed to beautify that section.

Copeland said Purcell asked a man from the city about a prior time and posting of park property, and there was no posting done on this park to indicate it was being considered to be closed. He said he has the deed of dedication and it says the title to the park will revert to the present owners but it does not say anything about Morford Land and Leasing or any of their heirs but it says the present owners, and those are legal arguments. Copeland said it is a park and the neighborhood kids play in it.

PUBLIC HEARING CLOSED.

Purcell said he respected Copeland's comments and did not know if we posted every park, but when this was done there was much consternation about closing parks that were being used. He said he understood that every park that was being considered was posted, and the comment period was extended out further so it was declared not needed about two years ago and now someone wants it and we are going through the same drill again. Haywood said one of the parks in his area was not properly posted that it was being considered so Copeland could be right. Bass said he respected Mr. Copeland and his wife and knew them well but there is a park a block away.

MOVED by Bass, SECOND by Baxter, to close the park in Morford Hills Addition, Part 2, and adopt the ordinance, waive reading of the ordinance, read the title only.

Shanklin asked if there was still recourse to the neighbors. Copeland said he felt they would be without much

recourse if the city declared it was not used and that it reverted, which may ultimately be to the heirs. Shanklin asked if council had anything to do with that. Copeland said the document they were relying on stated that once the city declared it closed, it would go back.

(Title read aloud) Ordinance No. 02-01

An ordinance closing the park located in Morford Hills Addition, Part 2.

VOTE ON MOTION: AYE: Baxter, Bass, Hanna, Devine, Purcell, Shanklin. NAY: Haywood, Moeller. MOTION CARRIED.

33. Hold public hearings and adopt resolutions declaring the structures at: 2104 NW Lake Ave.; 2235 NW Hoover Ave.; and 1114 SW 45th St. to be dilapidated and dangerous, thus causing a blighting influence on the community and detrimental to the public's health and safety. Authorize Neighborhood Services to solicit bids to raze and remove structures, if appropriate. Exhibits: Resolution Nos. 02-____; 02-____; and 02-____.

PUBLIC HEARING ON 2104 NW LAKE AVENUE:

Angie Alltizer, Neighborhood Services, said this property was brought for a condemnation public hearing in November at which time the owner said he would be able to do the required repairs and he applied for a building permit today but had failed to take any action beyond that so it is returned for guidance from the council. Mayor Powell asked if it was an out of town owner. Alltizer said the owner lives in Loco, Oklahoma. Shanklin said the owner ignored it until he received another notice and said he did not want to do the roof because of the weather but they are doing roofs all over his area of town.

Shanklin said he did not want to tear the house down but wanted the owner to fix it and wanted to be sure he did fix it and bring it back up to code. Vincent suggested tabling it for 30 or 45 days and if the owner has not taken action based on the building permit to condemn it, otherwise he will have six months under the building permit. Shanklin asked if it could be on 30 day increments. Alltizer said Shanklin asked the owner that during the previous public hearing and the owner agreed to have it finished with a 30 day inspection.

Mayor Powell asked if we have a telephone number for the owner and if we have called to ask him why he was not doing anything. Alltizer said staff had made numerous contacts and the owner applied for a building permit yesterday. Mayor Powell asked if we made contact saying that he made a promise and ask what he was doing. Alltizer said she and Manny Cruz had both left messages and the owner called back last Friday.

Shanklin asked if it was in the ordinance that council could give him 60 days or it is all over. Vincent asked which kind of building permit we were talking about giving. Mike Jones, Building Development, said he thought it was a remodel permit. Shanklin asked if that was good for six months and said that is where we failed the last time because he said he would do it and we dropped our action. Shanklin said he wanted the action that said if the man does not do it then it is over with and asked how that could be done. Purcell said it just keeps coming back and a permit was issued. Alltizer said it was requested but it has not been issued.

Shanklin said if we condemn it, the owner would have recourse in District Court. Vincent said yes, and the resolution says if he does not pull the demolition permit within 15 days that the City Attorney is authorized to compel demolition by District Court action, and he can argue in front of the judge that it should not be torn down. Shanklin asked if staff was recommending approval of the resolution and Vincent said yes.

MOVED by Shanklin, SECOND by Purcell, to adopt Resolution No. 02-10.

Baker said for clarification, if the resolution is adopted, staff cannot issue a building permit. Discussion was held regarding the types of permits available and the time allowed under each.

VOTE ON MOTION: AYE: Baxter, Bass, Hanna, Devine, Purcell, Shanklin, Moeller, Haywood. NAY: None. MOTION CARRIED.

(Title only) Resolution No. 02-10

A resolution determining a certain structure to be dilapidated and detrimental to the health, benefit, and welfare of the community, and ordering that the buildings be demolished and removed. Location: 2104 NW Lake Avenue, Lee Addition, Block 3, Lot 2, Comanche County, Lawton, OK. Title Holders: Herman H. & Nellie F. Jones % Melvin D. Jones, HC 64, Box 2100, Lawton, OK 73442-9725; Mortgage Holders: None.

PUBLIC HEARING ON 2235 NW HOOVER AVENUE:

Alltizer said this address refers to the Fort Sill Garden Apartments and a petition was previously presented by a citizens group. These structures have become unsecured six times in the last 24 months; there have been tall grass and weeds and junk and debris violations, it is definitely a chronic problem and what we would consider a blight on the community. Alltizer said she and Manny Cruz did an inspection on November 27, looking at a couple of the

structures, and each structure has four apartment units in it, some are in better shape than others, they are all kind of haphazardly secured, and they are secured at this time although they were not secured right after the petition was filed but the property owner has since taken care of that. She said photos show they are fairly unsightly and without having done a thorough inspection on each structure and apartment unit, she would feel safe in saying the cost to bring them to code and remodel them would far exceed 50% of the value of the property.

Devine said it is a very unsightly place and it is infested with pigeons and droppings.

Mayor Powell asked if anyone was present to speak during the public hearing.

John Kennedy, P. O. Box 8, Lawton, said he is the broker involved in the sale of this property. He said there is an active contract for sale of this property with a late January closing, the sale appears to be progressing and Matt Setters is present to represent the buyer and can present plans for use of the property. Kennedy said the seller and purchaser feel the property can be rehabed to the benefit of the city and understood the purchaser would use it for subsidized housing, and closing is anticipated some time this month. He said they admit the property is causing some problems, there are 72 units, and requested time to allow for closing of the sale and the rehab to start.

Mayor Powell asked how long ago the contract on the property was signed. Kennedy said November 12, 2001. Mayor Powell asked if an appropriate amount of earnest money had been put down. Kennedy said he believed it was 3% of the purchase price. Mayor Powell asked if it contained contingencies. Kennedy said it is subject to the purchaser finding financing. Information was distributed.

Matt Setters said he represented a small partnership of himself, his wife and a friend named Delta Properties. He said this is a decent property and Ms. Alltizer is correct on the costs because it is over \$750,000 rehab which well exceeds the 50% value, however, you cannot build 72 units in Lawton with over 1,000 square feet to house 72 families for that money so it is profitable. Setters said two local banks are looking at it but they do not have financing secured with either bank, and they intend to use local contractors. He said they are looking for a little bit of time on the condemnation and if they cannot get the contract closed in 90 days, they would step away from the picture, but their time frame was six months before they could complete the first unit for living in and 12 months for the first 24 units and 24 months for the total 72. Setters said he had talked with the Lawton Housing Authority and learned the demand is overwhelming; they had 300 certificates issued to them by the Tulsa office in August for Section 8 housing and they were only able to find 150 houses in Lawton that qualify for it, so he could fill 72 units just by calling the Lawton Housing Authority, not to mention the other social service organizations.

Setters said they currently operate in Duncan and about half of their properties are in Section 8 housing and they know the procedures and feel it is an honorable profession to provide housing and it is profitable for them. He encouraged council to look over their plans and grant time for them.

Mayor Powell asked when they anticipated the contract being consummated. Setters said originally the closing date was going to be January 20 but there was a problem in that there is currently a six digit mortgage on the property, so there is a problem in being able to purchase the property for a fair amount and they had to provide a release which they were late in providing, so they will not make January 20 but hoped to do it by March 1. Mayor Powell asked if the delay had been on the other end instead of on his. Setters said both really, and a structural analysis was done by a previous buyer 18 months ago by Robert Renshaw and Associates from Oklahoma City, and he has been hired to reissue that structural analysis with detailed engineering reports and it will take three to four weeks to do it but he had been assured the property itself was very structurally sound, it is just unsightly.

Purcell said this is the same thing the council gets every single time, trying for months and years to get buildings repaired or condemned then someone comes in and says they bought it last week. He said it may not be the same with these gentlemen and understood their efforts but if council does not condemn it, when will it be brought to code. Setters said two years maximum on all 72 units.

Haywood asked when the landscaping would be taken care of. Setters said there are structural problems being caused by the landscaping and they need to get that under control before the spring growth occurs and if they can close on the property before March 1, they would start clearing the debris immediately.

Bass asked if Setters would do anything to the buildings before closing on it. Setters said no, nothing.

Moeller said there is a typo on the closing date showing January 20, 2001, and even if that is a typo, normally once your closing date passes and you do not have a closing, it is dead. She said the offer was not accepted until after the date shown. Setters said that was up to them and they took it, and on the closing date, because the property is in such severe distress, they are really negotiating with the mortgage holder, which is a local bank that would obviously take a great loss because there is a \$200,000 mortgage so they have been negotiating with the bank.

Setters said they are really the only ones that can do it and he felt that was the reason the bank had stayed with them so long.

Moeller said the buyer was not able to obtain funding within the 28 days shown. Setters said the bank extended the contract and they are willing to stay with them as long as it takes to get it done. Kennedy said written extensions had been done but were not provided. Setters said the point was whether it was worth having 72 low income units and putting over \$750,000 into the Lawton economy, is it worth taking the risk to give him 90 days to get it closed. Moeller said the contract shows what they are planning to do and it did not work that way so they did not know what he was planning to do.

Mayor Powell asked that the public hearing portion be closed and asked for discussion.

Baxter asked if they had been working on the property for a year. Kennedy said it started in November.

MOVED by Bass, SECOND by Haywood, to table this for 90 days. AYE: Bass, Hanna, Devine, Purcell, Shanklin, Moeller, Haywood, Baxter. NAY: None. MOTION CARRIED.

Mayor Powell asked that the City be contacted sooner if this cannot be done and Setters and Kennedy agreed to do so. Kennedy noted the address was 2201-2235 NW Hoover.

PUBLIC HEARING ON 1114 SW 45TH STREET:

Alltizer said council considered this fire damaged structure on August 28 and allowed the owner additional time to donate it to Habitat for Humanity, Great Plains Improvement Foundation or Meet the Needs. The owner is present and there has been confusion as to who is interested in the property, and GPIF is looking at tearing the structure down and replacing it for affordable housing, and Community Development has funding to that. Alltizer recommended allowing GPIF to obtain the property but was not sure of the communications between GPIF and Community Development. Haywood said Mr. Gunter's wife was in a car accident, and they just moved offices so that may have played a part. Haywood suggested the matter be tabled and that he would contact Mr. Gunter, but he understood the owner to say last time that GPIF would take over the property.

Jim Walker, 1315 C, said he apologized to the neighbors for the condition of this property. He related health problems of those working at GPIF which have caused delays. Haywood said something has to be done, and if it cannot be done within 90 days he would recommend it for demolition. Walker said he would not want to live next to this property.

Ed Alexander, 2 Wichita Drive, said he was the new federal housing coordinator for the City of Lawton and prior to that he worked at GPIF and knows this property. He said Gunter asked if Community Development could assist with funding in this project and he was checking. Alexander said they have money to tear properties down and \$39,000 was left over that must be used for an affordable housing project that could be used to build a new structure at this particular location. He said he felt the property could be torn down in 60 days or less and then reconstruct another home within a year.

Haywood asked if Gunter was going to build a new home on the property. Alexander said if the city can provide HOME funds to tear the house down, Gunter has to build a new structure there and start construction within a year.

Mayor Powell closed the public hearing.

MOVED by Haywood, SECOND by Bass, to table this for 90 days. AYE: Hanna, Devine, Purcell, Shanklin, Moeller, Haywood, Baxter, Bass. NAY: None. MOTION CARRIED.

34. Consider adopting a resolution declaring the structures at 1225 S Sheridan Road to be dilapidated and dangerous, thus causing a blighting influence on the community and detrimental to the public's health and safety. Exhibits: Res. No. 02-____

Alltizer said this is known as the Sheridan Inn, it was significantly damaged in the May storm and has been to council several times and we have not been able to take much action on it. She said she did not believe the owner was present. Alltizer said she hoped council would not table this, it has been an eyesore for quite some time and the chain link fence was put up to secure the property but beyond that there has been no action and her office receives complaints on a daily basis and people want to know when something will be done about this.

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Purcell, SECOND by Moeller, to adopt the resolution to condemn the property.

Devine said the owner called him earlier today requesting this be postponed because he is still in insurance negotiations, then the city said he had to have an architect, then the contractor raised his bid by \$155,000. He said the owner wants to either demolish it or try to repair it but needed time. Devine said he was just conveying what he was told.

Alltizer said Mr. Patel has acted like the city placed an additional requirement as far as an architect having to sign off on the plans, but that requirement has been there all along and he has been informed of it. She said Patel brought in a statement last Friday that he was talking to an architect and builder but he has not taken any action except what has been prompted by city contacts. Alltizer said he would likely have taken an initiative before this point if he wanted to do this, and the insurance adjuster talked to Dan Tucker two months ago and said the claim had been settled. Alltizer said the owner said the insurance company was holding back funds based on depreciation but beyond that, the insurance company informed Mr. Tucker they were squared away.

Devine said the owner had a verbal contract with a contractor, but when an engineer or architect was requested, the contractor raised his bid \$155,000.

SUBSTITUTE MOTION by Devine, SECOND by Haywood, to give 60 days, and he would talk to him about it tomorrow and if he cannot do it, he would put it on the next council meeting. AYE: Devine, Purcell, Shanklin, Moeller, Haywood, Baxter, Bass. NAY: None. OUT: Hanna. MOTION CARRIED.

37. Consider an ordinance repealing Section 19A-2-3-232 and amending Sections 19A-2-3-233 and 234, Chapter 19A, Lawton City Code, 1995, which deletes the Stormwater Drainage Appeal Board and modifies the appeal process whereby the City Council will hear floodplain regulation appeals. Exhibits: Ord. No. 02-02; Flow Chart; Brief History of Appeal Process; Other Alternatives.

Bigham said we are required under the National Flood Insurance Program to have an appeal process in the regulation; FEMA does not set out any standards for that and we have gone through a variety of methods. He presented a slide of the current process calling for a public hearing and a board; the proposal streamlines the process and eliminates the Stormwater Drainage Appeal Board and the public hearing, as well as making other minor modifications dealing with the variance section. Bigham said there have been no appeals in the past five years but there are a couple of cases that may come up and he would like to streamline the process where those appeals are made directly to the council.

Mayor Powell said he and Bigham had discussed it and he recommended it be brought forward.

Bigham said initially the LMAPC was the appeal board and the background information shows a history of the processes used over the years. The LMAPC approved an appeal in which they were the final authority on a banking facility on Gore; residents were not aware an appeal was approved, there was no public hearing and in this process, there is no notice given to any property owners in the area, the appeal comes to council which holds an administrative hearing and makes a decision on the appeal following the National Flood Insurance and city code criteria.

Purcell asked why the board in place now could not deal with appeals as the final authority as opposed to council. Bigham said it is only a recommending body, they hold a public hearing and provide a recommendation to council, which has the final say. Purcell said we could make them the final say if we wanted to. Bigham agreed. Mayor Powell said council might want to overrule them and there would be a problem. Purcell said he understood. Shanklin asked the Mayor if he approved of this and Mayor Powell said yes.

MOVED by Shanklin, SECOND by Bass, to approve Ordinance No. 02-02, waive reading of the ordinance, read the title only. AYE: Purcell, Shanklin, Moeller, Haywood, Baxter, Bass, Hanna, Devine. NAY: None. MOTION CARRIED.

(Title read aloud in item) Ordinance No. 02-02

An ordinance related to floodplain regulations amending Division 19A-2-3, Chapter 19A, Lawton City Code, 1995, as amended by Ordinance Nos. 98-18 and 99-26, deleting the Stormwater Drainage Appeal Board and modifying the appeal process, and providing for severability.

38. Consider authorizing the Mayor to sign the Project Cooperation Agreement (PCA) with the Department of the Army for the Meadowbrook Creek Flood Control Project. Exhibits: Letter.

Jerry Ihler, Public Works Director, said on November 13 the council authorized sending a letter of intent to the Corps of Engineers which indicated the city supported the project and had funding available. The Corps sent the letter forward to headquarters and on December 19 the Department of the Army approved the funding for construction of the project. The estimated cost for the project is \$2.919 million; the City's share is 50% of the project for approximately \$1.46 million.

Ihler said the Corps is asking the city to sign this Project Cooperation Agreement which begins the process; this is the last hurdle in moving forward with acquiring the property and beginning the project. He said if council approves this agreement, the city will be committed to the Meadowbrook Flood Control Project and there will be no turning back.

Shanklin asked if we buy eight houses and do this work, does the Corps say there will not be any more flooding on Meadowbrook. Ihler said no, the Corps does not say that and we have not said that; what we have said is that it will

reduce flooding, should remove 26 homes from the floodplain or the ten year storm and 13 homes from the 100 year storm.

MOVED by Devine, SECOND by Baxter, to approve the Project Cooperation Agreement. AYE: Shanklin, Moeller, Haywood, Baxter, Bass, Hanna, Devine, Purcell. NAY: None. MOTION CARRIED.

Vincent said for the affected property owners, this document does not become final until it is signed by the Resident Engineer with the Corps of Engineers; the Corps real estate division will say when property acquisition can begin and it may be about the middle of February.

Addendum:

1. Consider authorizing the Mayor and City Clerk to execute a Partial Release of Easement pertaining to Lot 21, Block 8, Fields & Dunning Addition. Exhibits: File copy of the original Right of Way Deed.

Vincent said this is a title problem on property, the city does not need the easement, and he recommended approval of the partial release of easement.

MOVED by Purcell, SECOND by Moeller, to authorize the Mayor and City Clerk to execute a partial release of easement pertaining to Lot 21, Block 8, Fields & Dunning Addition. AYE: Moeller, Haywood, Baxter, Bass, Hanna, Devine, Purcell, Shanklin. NAY: None. MOTION CARRIED.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER

Shanklin asked if test results had been received on Patterson Center. Baker said an independent consultant is being selected for follow up air quality testing to make sure they are totally unbiased and fair, and it will be brought to council when received. Shanklin asked if the machine was still in place. Kim Shahan, Parks & Recreation Director, said the machine was removed on Monday; the smell is gone but that does not mean the mold is totally gone.

Baxter said some of the members got a chance to see the new Lawton Area Transit System bus parked out front; it is very nice and he encouraged everyone to ride it once it is on line.

Haywood said the Dr. J.L. Davenport Breakfast would be held on January 11, and it is cosponsored by Lawton Public Schools and St. John's Church, and Dr. Carol Mayes, Assistant Superintendent, will be the guest speaker. The annual Dr. Martin Luther King program will be held that evening and J.C. Watts will be the guest speaker.

Haywood said the Jubilee Celebration would be held on January 13 at the Galilee Baptist Church, sponsored by the NAACP. He said Mr. Thierry is the president and recently had a stroke so he is wished well on his recovery.

Haywood said on January 20 there will be a Dr. Martin Luther King freedom march starting at the Christian Center at 2405 SW Lee to the Union Baptist Church at 16th and Garfield. He invited everyone to participate.

Lt. Col. Puckett said tomorrow is the 100th anniversary of the arrival of the first field artillery units stationed at Fort Sill. He said the garrison staff is starting to relook at what it will take to get back to some pre911 activities on the polo field, including the youth soccer and concert series. Lt. Col. Puckett said General Maples wanted him to pass along that he looked forward to the meeting in the Emergency Operations Center on January 17 and extended Fort Sill's cooperation to participate in anything the city does in crisis management and the April 12 exercise. He said city staff members are invited to participate next week in a seminar at Fort Sill, followed by a February exercise with installation defense and reaction to a crisis either on or off post. Mayor Powell said he and General Maples were corresponding in that regard.

BUSINESS ITEMS:

40. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the possible settlement of a pending lawsuit of Mike Cornish, Case No. CJ-1993-253 and CS-97-138, District Court of Comanche County, and if necessary, take appropriate action in open session. Exhibits: None.

41. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending tort claim of Joseph LeGrand against the City of Lawton, and if necessary, take appropriate action in open session. Exhibits: None.

MOVED by Shanklin, SECOND by Baxter, to convene in executive session as shown on the agenda and recommended by the legal staff. AYE: Haywood, Baxter, Bass, Hanna, Devine, Purcell, Shanklin, Moeller. NAY: None. MOTION CARRIED.

The Mayor and Council convened in executive session at 10:25 p.m. and reconvened in regular, open session at 10:35 p.m. with roll call reflecting all members present.

Vincent reported on Item 40 that the Mayor and Council convened in executive session under 307B.4 Title 25 to

discuss the consolidated lawsuits of Mike Cornish vs. City of Lawton, CJ-1993-253 and CS-97-138. He said discussion was held on the proposed settlement offer by the plaintiff; City Attorney recommended a motion to reject the settlement offer and proceed to trial.

MOVED by Purcell, SECOND by Baxter, to reject the settlement offer and proceed to trial. AYE: Bass, Hanna, Devine, Purcell, Shanklin, Moeller, Haywood, Baxter. NAY: None. MOTION CARRIED.

Vincent reported on Item 41 that the Mayor and Council convened in executive session under 307B.4 Title 25 to discuss the pending tort claim of Joseph LeGrand vs. City of Lawton. He said a settlement offer was received, the City Attorney's Office recommends denial of the settlement offer but to authorize the City Attorney's staff to continue settlement negotiations.

MOVED by Baxter, SECOND by Bass, to deny the settlement offer but to authorize the City Attorney's staff to continue settlement negotiations. AYE: Hanna, Devine, Purcell, Shanklin, Moeller, Haywood, Baxter, Bass. NAY: None. MOTION CARRIED.

Mayor Powell said we went through some very controversial issues and he appreciated the way the council has worked this evening, making decisions in a very professional manner, and he would like to read in the paper for one time how well the council worked together. He said he reads often where the council are opposing one another but had not read where they came together and did a good job.

Devine said his and Baxter's wives are having a Pampered Chef party on Sunday and everyone was invited.

There being no further business to consider, the meeting adjourned at 10:40 p.m. upon motion, second and roll call vote.